

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the matter of	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket 99-25
	)	
Amendment of Service and Eligibility	)	MB Docket 07-172
Rules for FM Broadcast Translator Stations	)	RM-11338

September 6, 2011

**Comments by Jeff Sibert**

The following comments are in response to the Commission's Third Further Notice of Proposed Rulemaking in the above proceedings, released July 12, 2011. Jeff Sibert is an independent consulting engineer who provides services to LPFM and NCE applicants and licensees.

I am pleased the Commission has offered an opportunity to comment on the FM translator and LPFM rules in this proceeding and wish to add to following comments.

***Section 5 of the Local Community Radio Act of 2010:***

Section 5.1 of the Local Community Radio Act of 2010 ("LCRA") requires that the Commission make licenses available to FM translator and LPFM stations based on the needs of the local community. The Commission has decided the best way to accomplish this is to set a floor for LPFM applicants and dismiss pending translators in markets with insufficient opportunities. However, even with the applications dismissed, due to the licensing differences between translators and LPFM stations (distance separation vs. contour protection), opportunities may not still be available to meet the needs of the local community. The NPRM does not address second-adjacent waivers which will be required in most markets to have LPFM opportunities anywhere near the central business district(s). Also the complicated methodology used to obtain the licensing floor is arbitrary and adds a complexity

that may frustrate both LPFM and translator applicants in the future. The simplest method to solving this problem would be to use the procedures in para 24 of the FNPRM: Hold the FM translator licenses as pending until completion of the LPFM window. LPFM applicants would not need to protect pending translator applicants and could apply for these channels. After completion of the LPFM window, translator applicants could either be offered a single opportunity in order to modify their facilities to specify any non-reserved band channel or make minor change transmitter site moves if necessary. With the greater flexibility offered (at the present time) to FM translators, spectrum opportunities are more likely to be available. This LPFM and translator applicants are provided opportunities, and legitimate translator applicants who have been waiting more than 8 years are provided an opportunity to save their applications.

The Commission is not barred from holding translator applications until the conclusion of the LPFM window since the language of the LCRA does not include applications. The Commission already plans to dismiss translator applications in spectrum congested markets. It makes no difference whether the translator application is held in pending until after the conclusion of the LPFM window or dismissed, either way the translator application is not receiving cut-off protection.

### ***Joint LPFM and Translator Filing Window***

I would oppose the use of a joint LPFM and translator filing window. Every commercial broadcaster with an AM license would ultimately file for one or more translators and drown out LPFM operators who would have fewer available channels due to present licensing restrictions. Plus there is no realistic method the FCC can use to process mixed groups. LPFM operators must be given the first chance since LPFM applicants have been waiting patiently for more than 10 years for an opportunity to file and have never had an opportunity to apply for second or third adjacent channels which are the only channels available in most urban areas. Essentially, no lower power broadcasting opportunities have been available in larger urban areas in 30 years since applications for new class D educational

stations were prohibited and most reserved band NCE opportunities were gone by the 1980's.

Translator applicants have instead had years to apply for these frequencies and out of fairness should let LPFM operators have the first chance.

### ***Timing of Filing windows***

At para 29, the Commission discusses that it would open a translator window once a substantial portion of the LPFM applications have been processed. This may take years. I would encourage the Commission to instead open windows for both services at yearly intervals. Part of the reason there is so many applicants at each window is because the Commission is not offering enough opportunities for new applicants. Also, the lack of filing windows is part of what is driving the speculative translator filings and construction permit sales. When the Commission allows new applicants at more regular intervals, these problems go away. The number of applicants and the processing time for the Media Bureau will reduce significantly, sale prices of translators and thus the number of speculative filings will reduce, and those applicants who truly have a need will be able to file instead of having to rely on purchasing a translator from another broadcaster at inflated prices. Even if it takes longer than a year to process old applications, the applications will have cut-off protection and could be granted as Commission resources allow.

### ***Trafficking, move-ins, and other abuses***

I support the Commission's proposal to remove the practice of moving in translators from distant locations. The commission recently referred to this as serial moves. Although not technically illegal, they do undermine the intent of the minor change rules.

I would also encourage the Commission to put a freeze on the filing of analog<sup>1</sup> translator

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<sup>1</sup> By analog I refer to the FM broadcast signal that is receivable on a traditional FM radio. Digital refers to the iBiquity HD system that requires a modern receiver that can decode the ibiquity HD systems.

applications that rebroadcast digital HD sub-channels<sup>2</sup> until this abuse can be looked at by the FCC<sup>3</sup>. These are nothing more than clever loop holes of numerous translator rules and these stations are being used as a method to create brand new analog services. Many of these translators operate at unusual heights (300 meters or higher) with ‘fill-in’ translator status. Applicants are using these HD-2 and HD-3 rebroadcasts create new stations that have coverage comparable to a new class A station. The large coverage areas can remove many LPFM opportunities. How this works is that an FM broadcast station installs Ibiquity HD and programs an HD sub-channel. Then they rebroadcast the **digital** sub-channel only on an FM **analog** translator. The main analog (or HD-1) is not heard on the translator. This allows them to originate programming on an analog station, provided they have installed Ibiquity digital HD equipment and own a translator. Operators can also use this to get around ownership caps since translators are not counted towards this limit.

To reduce trafficking, the Commission could simply deny the transfer or assignment of any unbuilt construction permit, and could deny the transfer or assignment of any translator license unless it is transferred or assigned with no remuneration. To do otherwise would simply encourage the speculative filings that were seen during the last window now that operators have seen that it is possible to do so. Advances in computing technology make it even more likely that someone could develop software to find holes in every major market and dozens of applicants could file applications for every available frequency, regardless of whether the Commission imposes a cap. If there is a will, someone will find a way to profit from this.

With yearly filing windows, the Commission could specify a maximum of 15 applications per window. It is unlikely most operators would need or be able to even construct the 50 or 75 applications, and 50 or 75 applications per applicant would still prevent the expeditious processing of applications.

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<sup>2</sup> A sub-channel refers to HD multicast streams, commonly referred to as HD-2 or HD-3 channels.

<sup>3</sup> See informal objections that I have filed against K249ED, W227AP, K273BH, and K260BA

*Rebroadcast of AM stations:*

While the use of FM translators to rebroadcast AM stations have been a huge help to AM broadcasters, unless the Commission adopts some protections, every AM broadcaster in large metro areas will try to apply for FM translators and will then choke out LPFM operators.

If the Commission allows translators granted after May 2009 to be used to rebroadcast AM stations, LPFM operators should have the first chance at the available frequencies, and the following safeguards need to be adopted:

- A limit of 1 frequency per AM broadcast station with a limit of 5 FM translator stations per AM station. This would require the Commission to authorize synchronous (single frequency) network fm translators. Advances in digital exciter technology have made SFN's possible. Operators could then determine whether more complex engineering, cost, and possibility of small amounts of interference outweigh the increase in coverage. The use of a single frequency is also the most spectrum efficient.
- Require FM translators to adhere to the power and height limitations set forth in section 74.1235(b). For instance, a station operating west of the Mississippi with a maximum radial height of at 118 meters would be allowed up to 205 watts ERP. This would allow smaller interference areas to be created and would not reduce the possibilities for LPFM operators as much.
- Limit the use of FM translators to class D and class C AM broadcast stations and establish priorities for deciding which AM broadcast operators are most in need of an FM translator so those in greatest need are able to operate a translator.
- Allow FM translators to move to any available non-reserved band FM frequency as a minor change provided the change would not reduce opportunities for LPFM operators once

construction is completed. FM translator operators could take advantage of these moves to create SFN's, or move translators to more spectrum efficient frequencies.

- Require AM operators who have existing FM translators to come into compliance with the above limitations within a reasonable time frame following the next FM translator window.

Ultimately the Commission should look at creating a new "class A1" service for AM broadcasters which would enable them to broadcast at up to 1 kW at 50 meters HAAT. AM broadcasters could then exchange their AM license for a class A1 license. Stations that elect to stay on the AM dial may be able to increase power or change directional patterns as other AM stations leave the dial. The class A1 station would be licensed similarly to translator stations and could be allowed on second or third adjacent channels. The details can be determined during a future rule making proceeding. Another option would be to give serious consideration to the rulemaking proposals to expand the FM band to include 76-88 Mhz and provide an opportunity to allow AM broadcasters to relocate there.

The above are simply some options that could be used to limit a flood of new AM on FM translators from removing many opportunities for LPFM operators. If the Commission is unable or willing to put reasonable safeguards, such as those I indicated above, then I would oppose a further expansion of the rebroadcast of AM stations on FM translators. There simply isn't enough room to accommodate every AM operator who wants FM translators, especially in large markets.

Respectfully submitted,

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